

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PETER WILSON,) No. C 14-00698 EJD (PR)
Petitioner,) ORDER OF DISMISSAL; GRANTING
v.) MOTION FOR LEAVE TO PROCEED
WARDEN,) *IN FORMA PAUPERIS*
Respondent.)
_____) (Docket No. 2)

Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his state conviction based on a new claim of actual innocence.¹ Petitioner's motion for leave to proceed *in forma pauperis*, (Docket No. 2), is GRANTED.

DISCUSSION

A second or successive petition containing previously raised or new claims may not be filed in the district court unless the petitioner first obtains from the United States

¹Petitioner filed a separate petition alleging newly discovered evidence, see Wilson v. Warden, No. C 13-05579 EJD (PR), and another alleging ineffective assistance of counsel, see Wilson v. Warden, No. C 14-01942 EJD (PR). Petitioner is advised that he should present all claims challenging the same state conviction in a single habeas action.

1 Court of Appeals an order authorizing the district court to consider the petition. 28
 2 U.S.C. § 2244(b)(3)(A).

3 It appears that the instant habeas petition is second or successive because
 4 Petitioner filed a prior habeas petition in this district, see Wilson v. Campbell, Case No.
 5 06-2242 JSW (PR), which challenged the same state conviction out of Santa Clara
 6 County in 2000. In that case, the Court dismissed the petition as untimely.² Section 2244
 7 applies when the previous petition was dismissed as barred by the statute of limitations
 8 which constitutes a disposition on the merits. McNabb v. Yates, 576 F.3d 1028, 1029
 9 (9th Cir. 2009); Murray v. Greiner, 394 F.3d 78, 81 (2d Cir. 2005).

10 Petitioner has not presented an order from the Ninth Circuit Court of Appeals
 11 authorizing this Court to consider a renewed challenge to his state conviction. See 28
 12 U.S.C. § 2244(b)(3)(A). Accordingly, the instant petition must be dismissed in its
 13 entirety as second and successive.

14 15 CONCLUSION

16 For the foregoing reasons, the instant petition for a writ of habeas corpus is
 17 DISMISSED without prejudice as second and successive. Petitioner may file another
 18 petition in this Court if he obtains the necessary order from the Ninth Circuit.

19 No certificate of appealability is warranted in this case. See Rule 11(a) of the
 20 Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254 (requiring district court to rule on
 21 certificate of appealability in same order that denies petition). Petitioner has not shown
 22 “that jurists of reason would find it debatable whether the petition states a valid claim of
 23 the denial of a constitutional right and that jurists of reason would find it debatable
 24 whether the district court was correct in its procedural ruling.” Slack v. McDaniel, 529
 25 U.S. 473, 484 (2000).

26
 27 ²Petitioner appealed the matter, and the Ninth Circuit denied his request for a
 28 certificate of appealability on September 24, 2008. See Wilson v. Campbell, No. 08-
 16320, slip op. at 1 (9th Cir. 2008).

1 Petitioner's motion for leave to proceed in forma pauperis, (Docket No. 2), is
2 GRANTED.

3 This order terminates Docket No. 2.

4
5 DATED: 7/10/2014


6 EDWARD J. DAVILA
7 United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

PETER WILSON,

Case Number: CV14-00698 EJD

Petitioner,

CERTIFICATE OF SERVICE

v.

WARDEN,

Respondent.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 7/10/2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Peter Wilson P-79916
Salinas Valley State Prison
P. O. Box 10501
Soledad, CA 93960

Dated: 7//10/2014

Richard W. Wieking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk